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9 Attorneys for Proposed Intervenor
10 CALIFORNIA MEDICAL ASSOCIATION

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SAN FRANCISCO

13 REBECCA CHAMORRO and
14 PHYSICIANS FOR REPRODUCTIVE
15 HEALTH,

16 Plaintiffs,

17 v.

18 DIGNITY HEALTH; DIGNITY HEALTH
19 d/b/a MERCY MEDICAL CENTER
20 REDDING,

21 Defendants.
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**ELECTRONICALLY
FILED**

*Superior Court of California,
County of San Francisco*

**04/27/2016
Clerk of the Court**

BY:ROMY RISK

Deputy Clerk

Case No. 15-549626

**DECLARATION OF SAMUEL VAN
KIRK, M.D. IN SUPPORT OF
CALIFORNIA MEDICAL
ASSOCIATION'S MOTION FOR
LEAVE TO FILE COMPLAINT IN
INTERVENTION**

Date: May 25, 2016

Time: 9:30 am

Dep't: 302

Judge: Hon. Harold Kahn

Hearing Reservation no. 04260525-06

1 I, Samuel Van Kirk, MD, declare:

2 1. I submit this declaration in support of the California Medical Association's
3 ("CMA") motion for leave to file a complaint in intervention in the above-captioned case.
4 Unless otherwise indicated, I have personal knowledge of the facts set forth herein, and if
5 called upon to testify, could and would competently testify thereto.

6 2. I am a physician and board-certified in obstetrics and gynecology. I hold
7 undergraduate and graduate degrees in mechanical engineering from the University of
8 California Santa Barbara and Stanford University, respectively. I received an MD degree
9 from the University of Southern California Keck School of Medicine and thereafter did
10 residency training in obstetrics and gynecology at the Oregon Health & Science
11 University Hospital. I have been practicing medicine as a board-certified obstetrician-
12 gynecologist for 14 years.

13 3. I am a current CMA member and have been a member continuously since
14 2008.

15 4. I have a private OB/GYN practice in Redding, California. I hold privileges
16 at Mercy Medical Center Redding ("Mercy Hospital"), a hospital owned and operated by
17 Dignity Health. I also am an active member of the medical staff at Mercy Hospital, where
18 I currently hold a leadership position on the medical executive committee as Surgical
19 Division Chief-Elect.

20 5. I am Rebecca Chamorro's ("Chamorro") obstetrician-gynecologist and
21 treated her during the pregnancy of her third child, which was delivered at Mercy Hospital
22 by Cesarean section ("C-section") on January 20, 2016. During her pregnancy, Chamorro
23 informed me that she and her husband do not desire to have more children. I provided her
24 with information regarding all of her birth control options, including the option of
25 immediate postpartum tubal ligation. After considering all of her options, Chamorro gave
26 her informed consent to undergo tubal ligation at the time of her scheduled C-section at
27 Mercy Hospital. It is my opinion as Chamorro's doctor that tubal ligation at the time of
28 her C-section was medically indicated and in her best interest. In light of Chamorro's

1 medical history, risk factors, and personal desire, I recommended this course of action and
2 fully supported her decision to undergo this sterilization procedure.

3 6. Despite my recommendation and Chamorro's desire to have a tubal ligation,
4 Mercy Hospital denied my written request for authorization to perform the procedure
5 during Chamorro's scheduled C-section.

6 7. I have practiced at Mercy Hospital for 11 years and am very familiar with
7 the hospital's sterilization policy and enforcement of the Ethical and Religious Directives
8 for Catholic Health Care ("ERDs"). In addition to Chamorro, I have had over 50 patients
9 in the last 8 years who have been denied a tubal ligation at Mercy Hospital pursuant to its
10 sterilization policy and the ERDs.

11 8. My understanding is that Mercy Hospital's sterilization policy is the same as
12 the ERDs: (1) direct sterilization is banned, but (2) procedures that induce sterilization
13 may be permitted if their direct effect is the cure or alleviation of a present and serious
14 pathology and a simpler treatment is not available. Under these policies, tubal ligations
15 should never be permitted because they are not used to cure or alleviate present or serious
16 pathologies. Tubal ligations are only performed to prevent future pregnancy.

17 9. Despite the ostensible ban on sterilization under Mercy Hospital's policies, I
18 have been permitted to perform some postpartum tubal ligations at Mercy Hospital. It has
19 been my understanding that in order to perform a tubal ligation at the time of a C-section,
20 Dignity Health requires the doctor to: (1) receive permission from the hospital's review
21 committee prior to the time of delivery, and (2) confirm at the time of the C-section that
22 there is "pathologically thin uterine scarring." I developed this understanding based on
23 conversations with medical personnel at Mercy Hospital, in particular Dr. James De Soto,
24 who is a member of the hospital review committee that determines whether to grant or
25 deny authorizations to perform postpartum tubal ligations. Dr. De Soto is a hospital
26 administrator employed by Dignity Health. He is retired from the practice of medicine
27 and does not hold privileges at Mercy Hospital.

28 10. I believe that Mercy Hospital's review committee that decides requests for

1 tubal ligations at Mercy Hospital includes Dr. De Soto and other non-physician
2 individuals from the Catholic Church. I formed this belief from correspondence I have
3 received from the review committee.

4 11. Based on my experience, decisions by the review committee are not
5 primarily based upon evidence-based, sound medical judgment. Rather, the review
6 committee is ostensibly charged with enforcing the ERDs and Mercy Hospital's
7 sterilization policy, which carries out the ERDs. Such criteria is non-medical and, in my
8 experience, often runs counter to the sound medical judgment of physicians. Based on my
9 experience, in deciding whether to grant or deny authorization for a tubal ligation, the
10 review committee does not regularly consider a patient's medical history, medical records,
11 or other medical considerations.

12 12. As a member of the medical executive committee of the medical staff at
13 Mercy Hospital, I am aware of or witnessed the interaction between the medical staff and
14 hospital administrators concerning the hospital's sterilization policy or ERDs. The review
15 committee does not involve the medical staff or any of its representatives in a decision in
16 a particular case whether to allow a tubal ligation. Nor did the medical staff have any
17 meaningful input or involvement in the development of Mercy Hospital's sterilization
18 policy.

19 13. The denial of a request for a tubal ligation has many consequences on my
20 patients and me. Chamorro and other patients like her may be required to undergo a tubal
21 ligation at a different facility, sometimes at higher cost depending on the patient's
22 available health care coverage. Patients denied a tubal ligation at Mercy Hospital but who
23 wish to find another facility where her obstetrician resides are exposed to additional risks
24 of another medical procedure involving anesthesia. They also may settle for a different
25 type of contraception that could be less effective. Patients who are denied tubal ligations

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1 may become pregnant again against their desires. I may be required to treat these patients
2 and any medical conditions or complications that arise from their pregnancies.

3
4 I declare under penalty of perjury under the laws of the State of California that the
5 foregoing is true and correct.

6 Executed on this 26th day of April 2016, at Redding, California.

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9 Samuel Van Kirk, MD